

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-42, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Initially, the Applicant notes that a goal of patent examination is to provide a prompt and complete examination of a patent application.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the *initial review* of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel *should* state *all* reasons and bases for rejecting claims in the *first* Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

See Manual of Patent Examining Procedure (MPEP) § 2106(II). As such, the Applicant assumes, based on the goals of patent examination noted above, that the present Office Action has set forth "all reasons and bases" for rejecting the claims.

Claims 1-4, 7-14, 17-24 and 27-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over "The Gnutella Protocol Specification v0.4" ("Gnutella") in view of USP 5,526,358 ("Gregerson"). Claims 5-6, 15-16 and 25-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gnutella in view of Gregerson, and further in view of USPP 2002/0194309 ("Carter"). The Applicant respectfully traverses these

rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

### **REJECTION UNDER 35 U.S.C. § 103**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a

*prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

**I. The Proposed Combination of Gnutella and Gregerson Does Not Render Claims 1-4, 7-14, 17-24 and 27-42 Unpatentable**

**A. Independent Claims 1, 11, 21 and 32**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Gnutella and Gregerson does not disclose or suggest at least the limitation of "automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network," as recited by the Applicant in independent claim 1.

The Final Office Action states the following:

With regard to claim 1, Gnutella discloses a method for communicating information in a distributed media network, the method comprising:

automatically detecting initiating detecting and detecting whether one or more of new media, data and/or service within the distributed network is available (Gnutella: Page 1, "Query". The "Query" descriptor is used for finding media that is available on the network. Further, the actual act of detecting is performed automatically. Even if the user initiates the act of detecting with a query, the act itself is performed automatically and without user intervention.);

migrating said newly available one or more of new media, data and/or service to at least a first media processing system with the distributed media network (Gnutella: Page 1, "Push". "migrating" is interpreted as

being equivalent to transfer (See specification paragraph [0011], where transfer and migrate seem to be interchangeable.); and

storing said migrated newly available one or more of new media, data and/or service at said least a first media processing system (Gnutella: Page 7. The file is downloaded, which means that the file is stored at the destination.).

*Gnutella does not disclose expressly initiating detecting without user intervention whether the one or more of new media, data, and/or service becomes newly available.*

*However, persistent query's, such as that disclosed in Gregerson, are very well known in the art. In Gregerson, a "Persistent Find Query" is utilized to detect the availability of a resource as soon as it is available in the network (Gregerson: Column 12, lines 29-41). For a persistent query, a user initiates the initial query. If the item being searched for is not found, the system automatically, and without user intervention, searches for the item again after some interval or in a continuous fashion. Thus, any new items would be discovered when the search executes after the new item appears in the system.*

Thus, it would have been obvious to modify the teachings of Gnutella with persistent queries, such as that in Gregerson.

See Office Action at pages 6-8 (emphasis added). The Final Office Action continues to rely for support on Gnutella's Query descriptor. The Applicant points out that the Query descriptor of the Gnutella protocol is used only by a user for purposes of searching a local data set by the servant that receives the Query descriptor. See Gnutella at page 1. More specifically, **the Query descriptor is used to locate a match (and a QueryHit) against existing data within the local data set of the specific servant. The Query descriptor, as well as any of the remaining Gnutella descriptors, is not used (and cannot be used) for purposes of initiating detection and detecting whether media, data, and/or service become newly available.**

Furthermore, a user has to specifically designate the search criteria (or the search string) for purposes of using the Query descriptor. In other words, the Query descriptor, as well as any other descriptor of the Gnutella protocol, requires user participation (the user has to initiate the query) and, therefore, cannot be used for purposes of “automatically and without user intervention, initiating detection and detecting” newly available media. Obviously, Gnutella requires the user to initiate the detection, and no detection can be performed without such user intervention.

The Examiner, in the above citation, concedes the following:

Gnutella does not disclose expressly initiating detecting without user intervention whether the one or more of new media, data, and/or service becomes newly available.

See the Final Office Action at page 7. The Examiner then relies for support on col. 12, lines 29-41 of Gregerson, which describes the “persistent query.” The Applicant is not certain why the Examiner is using Gregerson since its “persistent query” (similarly to Gnutella’s Query) is initiated by the user. In fact, the Examiner concedes that for a persistent query, “a user initiates the initial query”. See Final Office Action at page 7. Obviously, without the user initiating the query process, there will be no detection taking place under both Gnutella and Gregerson.

Therefore, the Applicant maintains that the combination of Gnutella and Gregerson does not (and cannot) disclose or suggest at least the limitation of

“automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network,” as recited by the Applicant in independent claim 1.

Accordingly, the proposed combination of Gnutella and Gregerson does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable. Independent claims 11, 21 and 32 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11, 21 and 32 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-4, 7-10, 12-14, 17-20, 22-24, 27-31 and 33-42**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, 21 and 32 under 35 U.S.C. § 103(a) as being unpatentable over Gnutella in view of Gregerson has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-4, 7-10, 12-14, 17-20, 22-24, 27-31 and 33-42 depend from independent claims 1, 11, 21 and 32, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-4, 7-10, 12-14, 17-20, 22-24, 27-31 and 33-42.

## **II. Rejection of Dependent Claims 5-6, 15-16, 25-26 and 36-37**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, 21 and 32 under 35 U.S.C. § 103(a) as being unpatentable over Gnutella in view of Gregerson has been overcome and requests that the rejection be withdrawn. Additionally, since the additional cited reference (Carter) does not overcome the deficiencies of Gnutella, claims 5-6, 15-16, 25-26 and 36-37 depend from independent claims 1, 11, 21 and 32, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 5-6, 15-16, 25-26 and 36-37.

In general, the Final Office Action makes various statements regarding claims 1-42 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should

the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).



**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-42 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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